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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,512	02/29/2008	Takehiro Matsumoto	47487-0003 (230337)	1013

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EXAMINER	
WILLIAMS, LELA	

ART UNIT	PAPER NUMBER
1789	

NOTIFICATION DATE	DELIVERY MODE
01/10/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/590,512	MATSUMOTO ET AL.	
	Examiner	Art Unit	
	LELA S. WILLIAMS	1789	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 April 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) *1-4,7-11,14 and 15* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1-4,7-11,14 and 15* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 8, 2011 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4, 7-11, 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 15, the claim states the beverage "has a decreased odor of the maca extract." It is unclear to what is considered "decreased" and what is "decreased" measured from.

Regarding claims 9, the claim states, "wherein the odor of the alcoholic beverage comes from the maca extract" and it is unclear if applicant means the overall odor of the beverage or the odor to which is being decreased.

Claims 2-4, 7-8, 10-11, and 14, are rejected as being dependent from the rejected independent claims.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4, 9-11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suntory News Release No. 8691 in view of Herraiz et al., *"Analysis of wine distillates made from Muscat grapes (Pisco) by multidimensional gas chromatography and mass spectrometry."* As evidenced by, The Uncorked Cellar webpage and wine*access* webpage.

Regarding claim 1, 3, 4, Suntory discloses a liquor product wherein maca and rose hip were infused in Andes white grape distilled spirits and finished with lime and lemon juice. The press release was silent to the use of Muscat grapes and the content of acetic acid with respect to the amount of pure alcohol therein.

Herraiz discloses Muscat grapes were known grapes used in making wine and discloses an analysis of Pisco wine which was made from Muscat grapes (Title) and identifies in Table 1, that the Pisco intrinsically possesses an acetic acid in an amount of 100 mg/l (100ppm) of absolute ethanol. Herraiz also states such wines containing said grapes were "being considered a high quality product" (page 1540). Herraiz discloses that Pisco made from Muscat produce high quality wines which can be attributed to the high content level of volatile terpenoids which are well understood in the art to contribute to the organoleptic properties of the wine (p. 1543, col. 1). Therefore, it would have been obvious to one of ordinary skill in the art to uses said grapes in the product of Suntory in efforts to produce a wine having a high content level of volatile terpenoids, thereby producing a high quality wine product.

As mentioned, Muscat grapes were known and commonly used in wine processing, and this is further evidenced by The Uncorked Cellar webpage and wine*access* webpage. The web pages discloses "[t]he Muscat grapes is the world's oldest known grape variety." and "[Muscat grapes are] one of the more versatile white wine grapes...grown around the world for use in light and dry wines" respectively. As such, given the wide spread usage of the grapes in wine and Herraiz's teaching of producing "high quality product", the decision to use Muscat grapes would have been obvious to one of ordinary skill in the art. Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

> This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Therefore, given that the use of Muscat grapes were known and commonly used in wine making, as stated above, one of ordinary skill in the art would have been motivated to incorporate Muscat grapes into the wine of Suntory.

Furthermore, given that Suntory in view of Herraiz encompasses the presently claimed invention, it is natural and thus obvious that the maca extract containing beverage of Suntory in view of Herraiz would have also had a decreased odor of the maca extract.

Regarding claim 2, although the combination of Suntory in view of Herraiz discloses a maca extract alcoholic beverage, neither reference discloses the amount of maca contained in the distilled liquor. However, since the instant specification is silent to unexpected results, the specific amount of maca contained in the distilled liquor is not considered to confer patentability to the claims. As the flavor and odor were variables that can be modified, among others, by adjusting the amount of maca contained in the distilled liquor, the precise amount would have been considered a result effective variable by one having ordinary skill in the art at the time the invention was made. As such, without showing unexpected results, the claimed amount cannot be considered critical. Accordingly, one of ordinary skill in the art at the time the invention was made would have optimized, by routine experimentation, the amount of maca contained in the distilled liquor in Suntory to obtain the desired flavor and odor (In re Boesch, 617 F.2d. 272, 205 USPQ 215 (CCPA 1980)), since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (In re Aller, 105 USPQ 223). Therefore, it would have been within the ambit of one of ordinary skill in the art to determine a suitable amount of maca extract, including that which is presently claimed, to obtain the desired final taste and odor of the beverage.

Regarding claims 9-11 and 15, as stated above, the combination of Suntory in view of Herraiz discloses a distilled liquor product made from Muscat grapes with an extract of maca, wherein the acetic acid content is 100 mg/l (100ppm) of absolute ethanol, contains lemon and

lime juice, and rose hip extract. It is noted that the references do not expressly disclose the method steps; however given that the references combined identical ingredients to produce the product, applicant's method step of "adding" was naturally preformed. Further, applicant is reminded that since Suntory in view of Herraiz teaches of substantially the same product produced by substantially the same method (i.e., combining or "adding" the ingredients together) as instantly claimed by applicant; where the claimed and prior art products are produced by substantially identical processes (i.e., combining or "adding" the ingredients together), a prima facie case of obviousness has been established. To switch the order of performing process steps, i.e. the order of the addition of the ingredients into the final mixture, would be obvious absent any clear and convincing evidence and/or arguments to the contrary (MPEP 2144.04 [R-1]). "Selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results." Further, given that maca naturally has a strong odor as an inherent characteristic, it is only natural for said characteristic to cause odor in the alcoholic beverage.

Regarding the recitation in the claims that the method is "for decreasing an odor of a maca extract-containing alcoholic beverage" is merely an intended use. Applicants attention is drawn to MPEP 2111.02 which states that intended use statements must be evaluated to determine whether the intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is the examiner's position that the intended use recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art and

further that the prior art structure is capable of performing the intended use. Given that Suntory in view of Herraiz naturally disclose combining or "adding" the ingredients together as presently claimed, it is clear that the beverage of Suntory in view of Herraiz would be capable of performing the intended use, i.e. "decreasing an odor of a maca extract-containing alcoholic beverage", presently claimed as required in the above cited portion of the MPEP.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suntory News Release No. 8691 in view of Herraiz et al., "*Analysis of wine distillates made from Muscat grapes (Pisco) by multidimensional gas chromatography and mass spectrometry.*" in further view of Ogawa et al. JP 2004-000171 and as evidenced by, The Uncorked Cellar webpage and wine*access* webpage.

Suntory and Herraiz are applied as discussed above for claim 1. Both references were silent to the extraction of maca. Ogawa teaches the addition of alcoholic extracted maca into food products (abstract). The maca was extracted with ethanol at room temperature (25^0C) or at 40^0C to raise the extraction efficiency [0020]. Given Ogawa's teaching of the alcohol extracted maca being a functional food which increased blood levels of growth hormones and stamina and the ability of the plant to prevent the decrease in physical strength, and the teaching that it could be provided in liquids and solutions [0021, 0060], one of ordinary skill in the art would have been motivated to extract the maca using the process as set forth in the reference, i.e., ethanol extraction, and incorporate the extract into the beverage of Suntory in view of Herraiz.

7. Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suntory News Release No. 8691 in view of Herraiz et al., "*Analysis of wine distillates made from Muscat grapes (Pisco) by multidimensional gas chromatography and mass spectrometry*." in further view of Gonzales et al. US. Pub 2006/0147600 and as evidenced by, The Uncorked Cellar webpage and wine*access* webpage.

Regarding claim 8, Suntory and Herraiz are applied as discussed above for claim 1. Both references were silent to the beverage being carbonated. Gonzales teaches a carbonated beverage product [abstract] containing maca. It would have been within the ambit of one of ordinary skill to carbonate the beverage of Suntory in order to produce a beverage which has a "fizzy" effect and would add a pleasant mouth feel to the beverage.

Regarding claim 14, Suntory and Herraiz are applied as discussed above for claim 9. Both references were silent to the beverage being carbonated. Gonzales discloses the use of carbon dioxide [0045] in the maca beverage for stabilization. Therefore, it would have been obvious to one of ordinary skill in the art to use carbon dioxide in Suntory for stabilization which would necessarily produce carbonic acid since it will intrinsically form.

Response to Arguments

8. Applicant's arguments filed April 8, 2011 have been fully considered but they are not persuasive.

Regarding Applicant's statement on page 8, Applicant argues that "Herraiz does not identify either the type of Pisco or the source of Pisco used"; however, given that the reference disclosed an "Analysis of Wine Distillates **Made from Muscat Grapes** (Pisco)…" (Title) and that "Pisco is a common drink…which is obtained by distillation of wine made from Muscat

grapes." It is reasonable to conclude the type of Pisco used in the reference is made from Muscat grapes. Applicants provide EXHIBIT I to show that "pisco" is a broad term and may not use Muscat grapes, however, as previous stated, Herraiz explicitly states the use of Muscat grapes and EXHIBIT I also states the most widespread grape used as raw material to make Chilean Pisco is the Muscat grapes. As such, it is reasonable to conclude that wine analysis preformed by Herraiz was wine produced from Muscat grapes.

Applicant also argues on page 9 that a "skilled artisan has no way of knowing where or how to acquire the Pisco analyzed by Herraiz"; however that does not detract from the teaching set forth in the reference. Even if the skilled artisan could not find the Pisco of Herraiz, the artisan would have the knowledge that it was obtained by distillation of wine made from Muscat grapes. As such, given that the said wine was made from Muscat grapes, as is the present invention, it would intrinsically posses the desired properties as presently claimed. Therefore, given that Herraiz discloses a wine made from Muscat grapes and shows that it possesses an acetic acid amount as that presently claimed, it would have been obvious to one of ordinary skill in the art to use said grapes in the liquor of Suntory, in order to produce a "high quality" beverage. Furthermore, as set forth in MPEP 2121, when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07." It is noted that MPEP 2121.01 further states that a reference contains an "enabling disclosure" if the public was in possession of the claimed invention before the date of invention. "Such possession is effected if one of ordinary skill on the art could have

combined the publication's description of the invention with his [or her] own knowledge to make the claimed invention", In re Donohue, 766 F.2d 531,226 USPQ 619 (Fed. Cir. 1985). Donohue further states that it "is not, however, necessary that an invention described in a publication shall have actually been made in order to satisfy the enablement requirement and citing In re Samour, 571 F.2d 559, 197 USPQ 1, further states "[W]hether or not the claimed invention has been made previously is not essential to the determination that a method of preparing it would have been known by, or would have been obvious to, one of ordinary skill in the art".

With respect to the arguments set forth on page 10, Applicant argues "that not just any pisco will suffice." and points to the instant specification to prove this; however, Applicant is adding the identification of pisco into the specification for the sake of the present argument. Pisco was never identified in the current specification nor is there a current amendment to the specification. The present invention only requires the acetic acid to be within a specified range to mask the odor of maca and Herraiz identifies that the Pisco, made from Muscat grapes intrinsically possesses an acetic acid in an amount of 100 mg/l (100ppm) of absolute ethanol (Table 1), which falls within Applicants specified range. Given that the Pisco of the reference possesses the required amount of acetic acid, as present claimed, the Pisco of the reference is also expected to mask the odor of maca.

With respect to page 11, again Applicant states Herraiz in regards to the Muscat grapes. As stated above, given the title and the disclosure on page 1540, it is concluded that Herraiz is analyzing Pisco made from Muscat grapes. Regarding Applicants remark to there being no reason "to choose the unidentified "pisco" of Herraiz over a different liquor", Herraiz teaches that wines made from Muscat grapes are considered high-quality products, therefore, one skilled

in the art would have been motivated to use said grapes in efforts to produce a high quality beverage. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The rejection is not based on hindsight but rather proper motivation to combine, i.e., the use of Muscat grapes to produce quality wine, found in the reference (Herraiz) itself. In response to applicant's argument that there is no suggestion of the combination masking an odor of maca, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985.

With respect to page 12, Applicant states that "Neither Herraiz nor Suntory8691 teach or suggest the combination of a specific type of distilled liquor and a specified range of acetic acid to accomplish a odor-decreasing effect" , applicant is reminded that it is not required for the prior art to "accomplish" the same effect, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985. The present claims are to a beverage and a method of adding ingredients together, which the prior discloses. Suntory in view of Herraiz discloses a

distilled liquor product made from Muscat grapes with an extract of maca, wherein the acetic acid content is 100 mg/l (100ppm) of absolute ethanol, contains lemon and lime juice, and rose hip extract, as required for the present claims. Regarding the method according to amended claim 9, Suntory in view of Herraiz discloses a distilled liquor product made from Muscat grapes with an extract of maca, wherein the acetic acid content is 100 mg/l (100ppm) of absolute ethanol, contains lemon and lime juice, and rose hip extract. It is noted that the references do not expressly disclose the method steps; however given that the references combined identical ingredients to produce the product, applicant's method step of "adding" was naturally preformed. Further, applicant is reminded that since Suntory in view of Herraiz teaches of substantially the same product produced by substantially the same method (i.e., combining or "adding" the ingredients together) as instantly claimed by applicant; where the claimed and prior art products are produced by substantially identical processes (i.e., combining or "adding" the ingredients together), a prima facie case of obviousness has been established. To switch the order of performing process steps, i.e. the order of the addition of the ingredients into the final mixture, would be obvious absent any clear and convincing evidence and/or arguments to the contrary (MPEP 2144.04 [R-1]). "Selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results." Further, given that maca naturally has a strong odor as an inherent characteristic, it is only natural for said characteristic to cause odor in the alcoholic beverage.

Regarding the recitation in the claims that the method is "for decreasing an odor of a maca extract-containing alcoholic beverage" is merely an intended use. Applicants attention is drawn to MPEP 2111.02 which states that intended use statements must be evaluated to

determine whether the intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is the examiner's position that the intended use recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art and further that the prior art structure is capable of performing the intended use. Given that Suntory in view of Herraiz naturally disclose combining or "adding" the ingredients together as presently claimed, it is clear that the beverage of Suntory in view of Herraiz would be capable of performing the intended use, i.e. "decreasing an odor of a maca extract-containing alcoholic beverage", presently claimed as required in the above cited portion of the MPEP.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references (pages 12-14), the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Herraiz clearly teaches wines made from Muscat grapes are "considered a high-quality product and a factor of important economical repercussion." (p. 1540, col. 2). Further regarding applicant's remarks that the Office has not specified what aspect of modified Suntory would show "high quality"; Herraiz discloses that Pisco made from Muscat

produce high quality wines which can be attributed to the high content level of volatile terpenoids which are well understood in the art to contribute to the organoleptic properties of the wine (p. 1543, col. 1). Therefore, it would have been obvious to one of ordinary skill in the art to uses said grapes in the product of Suntory in efforts to produce a wine having a high content level of volatile terpenoids, thereby producing a high quality wine product.

Applicant states again that there was a lack of teaching and lack of identification of the wine of Herraiz. As stated above, the reference is directed to an "Analysis of Wine Distillates Made from Muscat Grape (Pisco)..." (Title), therefore, one of ordinary skill in the art would know that the pisco of Herraiz is a Chilean Pisco made from Muscat grapes (page 1540), one would know to obtain Chilean Pisco made from Muscat grapes, and one would knows the properties as provided in Table 1.

Thus, given Herraiz's disclosure that Pisco made from Muscat produce high quality wines which can be attributed to the high content level of volatile terpenoids which are well understood in the art to contribute to the organoleptic properties of the wine (p. 1543, col. 1), it would have been obvious to one of ordinary skill in the art to use said grapes, as taught by Herraiz, in the product of Suntory in efforts to produce a wine having a high content level of volatile terpenoids, thereby producing a high quality wine product.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding Applicants remarks to unexpected results (page 15), given that Suntory in view of Herraiz discloses a distilled liquor product made from Muscat grapes with an extract of maca, wherein the acetic acid content is 100 mg/l (100ppm) of absolute ethanol, and contains lemon and lime juice, and rose hip extract, the combination of the references would naturally decrease the odor of maca extract contained in the beverage. Thereby producing expected results.

Regarding Applicant's statements on pages 16-17, Applicant states there is no rationale for concluding the claimed invention would have been obvious; the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Herraiz clearly teaches wines made from Muscat grapes are "considered a high-quality product and a factor of important economical repercussion." (p. 1540, col. 2). Further regarding applicant's remarks that the Office has not specified what aspect of modified Suntory would show "high quality"; Herraiz discloses that Pisco made from Muscat produce high quality wines which can be attributed to the high content level of volatile terpenoids which are well understood in the art to contribute to the organoleptic properties of the wine (p. 1543, col. 1). Therefore, it would have been obvious to one of ordinary

skill in the art to uses said grapes in the product of Suntory in efforts to produce a wine having a high content level of volatile terpenoids, thereby producing a high quality wine product.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Humera N. Sheikh/
Supervisory Patent Examiner, Art Unit 1789

/LELA S WILLIAMS/
Examiner, Art Unit 1789